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Justin Adamo, Gabriel Padilla, and Brigitte Reyes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

JUSTIN ADAMO, an individual; GABRIEL
PADILLA, an individual; BRIGITTE
REYES, an individual; individually on behalf
of themselves and all others similarly
situated, under the Private Attorney General
Act (PAGA), pursuant to Labor Code §§
2698, et seq.

Plaintiffs;

v.

CLARK PEST CONTROL, INC., a
California Corporation; CLARK PEST
CONTROL OF STOCKTON, INC., a
California Corporation; JMP BROS., INC., a
California Corporation; JAMES F. CLARK,
JR., an individual; **MICHAEL CLARK, an
individual; PATRICK CLARK, an
individual;** and DOES 1-50;

Defendants.

Case No.: 20CECG00418

THIRD AMENDED COMPLAINT

Plaintiffs, JUSTIN ADAMO, GABRIEL PADILLA, and BRIGITTE REYES,
complain of and allege as follows:

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PARTIES

1. Plaintiff, Justin Adamo, is an individual who is and at all times relevant to the events alleged herein, residing in the County of Fresno, State of California.

2. Plaintiff, Gabriel Padilla, is an individual who is and at all times relevant to the events alleged herein, residing in the County of Fresno, State of California.

3. Plaintiff, Brigitte Reyes, is an individual who is and at all times relevant to the events alleged herein, residing in the County of Fresno, State of California.

4. Plaintiffs, Justin Adamo, Gabriel Padilla, and Brigitte Reyes are hereinafter referred to collectively as "Plaintiffs."

5. Defendant, JMP Bros., Inc., is a California Corporation registered to do business in the State of California. Plaintiff is informed and believed JMP Bros, Inc. is doing business in Fresno County, California. **Plaintiffs are informed and believe that JMP Bros, Inc. was formerly named "Clark Pest Control, Inc.", and changed its entity name to JMP Bros, Inc. on February 20, 2020, after Plaintiffs filed this original action against "Clark Pest Control, Inc."**

6. Defendant, James F. Clark, JR., is an individual who is and at all times relevant to the events alleged herein, residing in the County of Kern, State of California. Plaintiff is informed and believes during relevant times herein, that James Clark is doing business in Fresno County, California.

7. **Defendant, Michael Clark, is an individual who is and at all times relevant to the events alleged herein, residing in the County of Kern, State of California. Plaintiff is informed and believes during relevant times herein, that Michael Clark is doing business in Fresno County, California.**

8. **Defendant, Patrick Clark, was an individual who is and at all times relevant to the events alleged herein, residing in the County of Kern, State of California. Plaintiff is informed and believes during relevant times herein, that Patrick Clark was doing business in Fresno County, California.**

9. JMP Bros, Inc., James L. Clark, Jr., **Michael Clark, and Patrick Clark** shall be collectively referred to hereinafter as “Defendants” unless otherwise referred to individually.

10. “Doe” Defendants 1 through 50 are sued herein under fictitious names. Their true names and capacities of the Defendants named herein as Does 1-50, inclusive, whether individual, corporate, associate or otherwise, are unknown to the Plaintiffs who, therefore, sue such defendants by fictitious names pursuant to California Code of Civil Procedure 474. Plaintiffs are informed and believe, and on that basis allege, that each Defendant sued under such fictitious name is in some manner responsible for the wrongs and the damages as alleged below, and in so acting was functioning as the owner, Shareholder, principal, agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent of the co-Defendants, and in performing the acts mentioned below, was acting, at least in part, within the course and scope of such authority as such agent proxy, servant, partner, joint venture, employee, alter-ego, managing agent and principal with the permission and consent of the Co-Defendants.

JURISDICTION AND VENUE

11. During all relevant times alleged herein, all relevant events took place in the County of Fresno, State of California.

12. This Court has jurisdiction over this action pursuant to Code of Civil Procedure § 410.10 and Business and Professions Code § 17203. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a claim under the Private Attorney General Act (“PAGA”) pursuant to Labor Code §§ 2698, et seq. Plaintiffs seek damages in excess of the jurisdictional minimum of this Court, and equitable remedies solely within the jurisdiction of this court.

FACTUAL ALLEGATIONS

13. Within the relevant statutory period, Plaintiffs were and are employed as “Residential Technicians, Commercial Technician, or Lead/Route Supervisor (which includes job duties as a technician).” Plaintiffs were classified as non-exempt, hourly employees.

1 Defendant, **JMP Bros, Inc. (formerly Clark Pest Control, Inc.)**, was headquartered in
2 Bakersfield, California. Defendants operate throughout several counties in the State of
3 California, including Fresno County, and provide pest control services to both residential and
4 commercial properties. Plaintiffs were required to report to work and perform work in Fresno
5 County, including Defendants' commercial location in Fresno County. Plaintiffs are informed
6 and believe that Clark Pest Control, Inc. was purchased by Rollins, Inc. in or around January
7 2020. According to the California Secretary of State website, the entity Clark Pest Control,
8 Inc. was changed from Clark Pest Control, Inc. to JMP Bros, Inc.

9 14. Plaintiffs are informed and believe JMP Bros., Inc., **Michael Clark, Patrick**
10 **Clark**, and/or James Clark are successors-in-interest to Clark Pest Control, Inc.; **are**
11 **responsible for the debts of the former Clark Pest Control, Inc.;** have agreed to be liable
12 for the debts of Clark Pest Control, Inc. (i.e. wages owed to Plaintiffs by Clark Pest Control,
13 Inc.); **or transferred assets away from JMP Bros, Inc. (formerly Clark Pest Control, Inc.)**
14 to potentially to avoid liability to Plaintiffs. Plaintiffs are informed and believe and herein
15 allege that JMP Bros, Inc., James F. Clark, Jr., **Patrick Clark, and Michael Clark** are
16 responsible for Clark Pest Control, Inc.'s liability for unpaid wages, interest, penalties, and
17 attorneys' fees due and owing to Plaintiffs in this action.

18 15. During relevant times herein, Plaintiffs were required to work before and
19 after the scheduled shift, without pay. Specifically, at the beginning of each workday prior to
20 the start of the scheduled shift, Plaintiffs performed work preparing the work truck, receiving
21 work orders, going over the schedules for the workday, among other general prep work. At
22 the end of each workday, Plaintiffs expended time maintaining the work truck, receiving work
23 orders, running reports, going over the schedules for the following workday, among other
24 tasks.

25 16. Plaintiffs were not paid for this time before and after the scheduled shift. For
26 example, Defendants had a practice of inputting employees' hours worked on a universal time
27 sheet, but specifically excluded all hours worked before the start and end of each shift.
28 Defendants caused Plaintiffs to sign off on this universal time sheet, without regard to the

1 actual amount of hours actually worked by Plaintiffs. Plaintiffs are informed and believe that
2 Defendants continue to not pay for all hours worked before and after the start of a scheduled
3 shift through the date of this complaint.

4 17. Specifically as to Plaintiff, Brigitte Reyes, Ms. Reyes also worked on
5 Saturdays, without pay, while employed as a “salesperson” during the relevant time period.
6 She was not paid minimum wages, regular wages, or overtime for this work. During the
7 relevant time period, Plaintiff Reyes also was required to work during paid vacation days,
8 effectively requiring Plaintiff to forfeit vested vacation wages.

9 18. Plaintiffs are paid production bonuses and commission in addition to their
10 base pay. During relevant times herein, the additional pay was not used in computing
11 Plaintiffs’ regular rate of pay to determine the proper overtime premium for all overtime hours
12 worked. In other words, Plaintiffs were paid an overtime rate below the legally mandated
13 overtime premium rate.

14 19. Because of the nature of the work, during relevant times herein, Plaintiffs
15 were/are unable to take a duty-free meal period. For example, Plaintiffs were/are to be in close
16 proximity to the company vehicle at all times, even during breaks. Plaintiffs’ schedules and
17 responses to customer requests also mandated that Plaintiffs work through their meal periods.
18 Also, because Plaintiffs were required to work off the clock before and after the scheduled
19 shift discussed *supra*, without pay, Plaintiffs were under strong compulsion to work through
20 breaks to finish their work as quickly as possible, thereby foregoing their meal breaks. Finally,
21 Plaintiffs are informed and believe Defendants did not maintain records of meal periods, as
22 required under section 7 of the applicable wage order.¹ Plaintiffs were not paid premium pay
23 as a result of missed meal periods.

24 20. Plaintiffs Padilla and Adamo also bring this action under the Private
25 Attorney General’s Act (“PAGA”), pursuant to Labor Code §§ 2699 et seq. for violations of
26 the California Labor Code. On December 12, 2019, pursuant to Labor Code § 2699.3(a) on
27 behalf of themselves and others, Plaintiffs provided written notice by certified mail to
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¹ Plaintiffs are informed and believe IWC Wage Order 5-2001 is the applicable wage order.

1 Defendant and the Labor and Work Force Development Agency (“Agency”) of the factual and
2 legal basis for the labor law violations alleged in this complaint. The case was assigned Case
3 No. LWDA-CM-761545-19. On January 7, 2020, Plaintiffs sent an additional PAGA letter,
4 alleging additional facts that gave rise to additional Labor Code violations. Plaintiffs hereby
5 incorporate the facts alleged in the respective PAGA notices. More than 65 days passed after
6 the notice was sent to the Agency and the employer, and the Agency did not provide Plaintiffs
7 with a “do not intend to investigate” letter, nor has it indicated that it intends to investigate.
8 Therefore, Plaintiffs are authorized to file a civil lawsuit pursuant to Labor Code §
9 2699.3(a)(2)(A). Defendant has not cured its actions. As stated above, Plaintiffs are informed
10 and believe JMP Bros., Inc., James F. Clark, Jr., **Patrick Clark, and/or Michael Clark** are
11 successors-in-interest; **are responsible for the debts of the former Clark Pest Control,**
12 **Inc.;** have agreed to be liable for the debts of **the former** Clark Pest Control, Inc., or
13 transferred assets away from **JMP Bros, Inc. (formerly** Clark Pest Control, Inc.) to avoid
14 liability to Plaintiffs, and are **personally** liable for civil penalties attributable to Clark Pest
15 Control, Inc. **(and now JMP Bros, Inc.)** in this action in accordance with Labor Code §§
16 2698 et seq.

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18 **FIRST CAUSE OF ACTION**

19 *Failure to Pay Minimum Wages*

20 (ALL PLAINTIFFS v. **ALL DEFENDANTS**; and DOES 1-50)

21 [Labor Code §§ 558, 558.1, 1194, 1194.2, 1197.1, 2699.5; and
22 Industrial Welfare Commission Wage Order No. 5-2001]

23 21. Plaintiffs re-allege and incorporate by reference the allegations of
24 paragraphs 1 through **20** as if fully stated herein.

25 22. Labor Code § 1194(a) provides the following: “Notwithstanding any
26 agreement to work for a lesser wage, any employee receiving less than the legal minimum
27 wage or the legal overtime compensation applicable to the employee is entitled to recover in a
28 civil action the unpaid balance of the full amount of this minimum wage or overtime
compensation, including interest thereon, reasonable attorney's fees, and costs of suit.”

1 23. Labor Code § 1197 provides the following: “The minimum wage for
2 employees fixed by the commission is the minimum wage to be paid to employees, and the
3 payment of a less wage than the minimum so fixed is unlawful.”

4 24. The applicable minimum wage fixed by the commission for Plaintiffs is
5 found in section 4 of IWC Wage Order No. 5-2001.

6 25. During relevant times herein, Plaintiffs were required to work before and
7 after the scheduled shift, without pay. Specifically, at the beginning of each workday prior to
8 the start of the scheduled shift, Plaintiffs performed work preparing the work truck, receiving
9 work orders, going over the schedules for the workday, among other general prep work. At
10 the end of each workday, Plaintiffs expended time maintaining the work truck, receiving work
11 orders, running reports, going over the schedules for the following workday, among other
12 tasks.

13 26. Plaintiffs were not paid for this time before and after the scheduled shift. For
14 example, Defendants had a practice of inputting employees’ hours worked on a universal time
15 sheet, but specifically excluded all hours worked before the start and end of each shift.
16 Defendants caused Plaintiffs to sign off on this universal time sheet, without regard to the
17 actual amount of hours actually worked by Plaintiffs. Plaintiffs are informed and believe that
18 Defendants continue to not pay for all hours worked before and after the start of a scheduled
19 shift through the date of this complaint. This is time that must be treated as “hours worked”,
20 which is time “an employee is subject to the control of an employer, and includes all the time
21 employee is suffered or permitted to work, whether or not required to do so...” (Cal. Code
22 Regs., tit. 8, § 11050, subd. 2(K) (Wage Order 5).)

23 27. Specifically as to Plaintiff, Brigitte Reyes, Ms. Reyes also worked on
24 Saturdays, without pay, while employed as a “salesperson” during the relevant time period.
25 She was not paid minimum wages, regular wages, or overtime for this work. During the
26 relevant time period, Plaintiff Reyes also was required to work during paid vacation days,
27 effectively requiring Plaintiff to forfeit vested vacation wages.
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1 28. Labor Code § 1194.2 also provides for liquidated damages in an amount
2 equal to the wages unlawfully unpaid and interest thereon. Plaintiffs bring this action for
3 recovery of minimum wages, interest, costs of suit, and attorneys' fees pursuant to Labor
4 Code § 1194(a).

5 29. Plaintiffs have been damaged by the foregoing conduct in an amount subject
6 to proof, within the jurisdictional limits of this Court.

7 30. WHEREFORE, Plaintiffs request relief including minimum wages, plus
8 interest, and liquidated damages, as described herein and below.

9 31. WHEREFORE, Plaintiffs request payment of penalties allowed by Labor
10 Code §§ 558, 1197.1.

11 32. WHEREFORE, Plaintiffs request attorneys' fees and costs pursuant to
12 Labor Code §§ 218.5, 1194(a).

13 33. This cause of action also is brought pursuant to California's Private
14 Attorney General Act. Therefore, Plaintiffs seek any additional remedies available under
15 Labor Code §§ 2698 et seq., including attorneys' fees pursuant to Labor Code § 2699(g)(1).

16 34. Plaintiffs also bring this cause of action against James Clark, individually;
17 **Patrick Clark, individually; Michael Clark, individually;** in accordance with Labor Code
18 section 558.1. **James Clark, Patrick Clark, and Michael Clark were owners; directors;**
19 **officers; or managing agents of JMP Bros, Inc.** (formerly Clark Pest Control, Inc.) with
20 control over the administration of its wage and hour policies.

21 35. **Plaintiff also brings this cause action under section 1197.1 against**
22 **James F. Clark, Patrick Clark, and Michael Clark to the extent each defendant acted as**
23 **an officer, agent, or employee of JMP Bros, Inc. (formerly Clark Pest Control, Inc.).**
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(ALL PLAINTIFFS v. **ALL DEFENDANTS**; and DOES 1-50)
[Labor Code §§ 510, 558, 558.1, 1194(a), 2699.5; and
Industrial Welfare Commission Wage Order No. 5-2001]

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42. WHEREFORE, Plaintiffs request payment of unpaid regular and overtime wages in accordance with California Labor Code and IWC Wage Order 5-2001 and Labor Code § 510, plus interest pursuant to Labor Code § 218.6.

43. WHEREFORE, Plaintiffs request attorneys' fees and costs pursuant to Labor Code §§ 218.5, 1194(a).

44. This cause of action also is brought pursuant to California's Private Attorney General Act. Therefore, Plaintiffs seek any additional remedies available under Labor Code §§ 2698 et seq., including attorneys' fees pursuant to Labor Code § 2699(g)(1).

45. Plaintiffs also bring this cause of action against James Clark, individually, **and Michael Clark, individually**, in accordance with Labor Code section 558.1. **James Clark, Patrick Clark, and Michael Clark were owners; directors; officers; or** managing agents of JMP Bros, Inc. (formerly Clark Pest Control, Inc.) with control over the administration of its wage and hour policies.

THIRD CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements / Maintain Records

(ALL PLAINTIFFS v. ALL DEFENDANTS; and DOES 1-50)

[Labor Code §§ 226, 226.3, 226.6, 558, 558.1, 1174, 1174.5, 1175, 2699.5; and
Section 7 of IWC Wage Order No. 5-2001]

46. Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through **45** as if fully stated herein.

47. Defendants have failed to maintain accurate payroll records and/or issue accurate itemized wage statements in accordance with, *inter alia*, Labor Code §§ 226, 226.3, 226.6, 1174, 1174.5, 1175, and Section 7 of IWC Wage Order 5-2001.

48. Labor Code § 226(a) requires Defendants to, without limitation, accurately report total hours worked, the applicable hourly wage rate, gross wages earned by employees, **the inclusive dates of the period for which the employee is paid, and the name and address of the legal entity that is the employer.** Defendants knowingly and intentionally failed to comply with Labor Code § 226(a) on each and every wage statement provided to Plaintiffs by failing to record all hours worked and excluding the above-described off-the-

1 clock work from each itemized wage statement. It also is inaccurate to the extent it omits
2 payment for authorized rest periods and non-productive time. **Defendants also knowingly**
3 **and intentionally failed to record Plaintiffs' applicable hourly wage rate, the inclusive**
4 **dates of the period for which the employee is paid, and the name and address of the legal**
5 **entity that is the employer.**

6 49. Labor Code § 1174(d) also requires Defendants to maintain and preserve, in
7 a centralized location, among other things, records showing the names and addresses of all
8 employees employed, payroll records showing the daily hours worked, and wages paid to
9 employees. Plaintiffs are informed and believe Defendants have knowingly and intentionally
10 failed to comply with Labor Code § 1174(d). Defendants' failure to comply with Labor Code
11 §1174(d) is a violation of Labor Code § 1175.

12 50. By failing to keep accurate payroll records as required by Labor Code §§
13 226, 1174 and section 7 of IWC Wage Order No. 5-2001, Defendants have injured Plaintiffs
14 by making it difficult to calculate their unpaid wages, interest, and other monies due and
15 owing to Plaintiffs. The actual damages caused by this breach of the Labor Code are still
16 accruing, and will include all of the costs of establishing and recalculating these sums.

17 51. Plaintiffs have been damaged by the foregoing conduct in an amount subject
18 to proof, within the jurisdictional limits of this Court.

19 52. WHEREFORE, Plaintiffs request payment of penalties for each inaccurate
20 wage statement Defendants issued to Plaintiffs in accordance to Labor Code §§ 226(e), 226.3,
21 226.6, 1174.5

22 53. WHEREFORE, Plaintiffs request penalties, attorneys' fees and costs
23 pursuant to Labor Code §§ 226(e).

24 54. This cause of action also is brought pursuant to California's Private
25 Attorney General Act. Therefore, Plaintiffs seek any additional remedies available under
26 Labor Code §§ 2698 et seq., including attorneys' fees pursuant to Labor Code § 2699(g)(1).

27 55. Plaintiffs also bring this cause of action against James Clark, individually,
28 **and Michael Clark, individually**, in accordance with Labor Code section 558.1. **James**

1 **Clark , Patrick Clark, and Michael Clark were owners; directors; officers; or managing**
2 **agents of JMP Bros, Inc.** (formerly Clark Pest Control, Inc.) with control over the
3 administration of its wage and hour policies.

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5 **FOURTH CAUSE OF ACTION**

6 *Missed Meal Periods*

7 (ALL PLAINTIFFS v. **ALL DEFENDANTS**; and DOES 1-50)
8 [Labor Code §§ 226.7, 512, 558, 558.1, 2699.5; and
9 IWC Wage Order No. 5-2001]

10 56. Plaintiffs re-allege and incorporate by reference the allegations of
11 paragraphs 1 through **55** as if fully stated herein.

12 57. Labor Code section 226.7(a) provides that “[n]o employer shall require any
13 employee to work during any meal or rest period mandated by an applicable order of the
14 Industrial Welfare Commission.” IWC Wage Order No. 5-2001 section 11(A) states that “[n]o
15 employer shall employ any person for a work period of more than five (5) hours without a
16 meal period of not less than 30 minutes... Unless the employee is reserved of all duty during a
17 30 minute meal period, the meal period shall be considered an “on duty” meal period and
18 counted as time worked.”

19 58. Because of the nature of the work, during relevant times herein, Plaintiffs
20 were unable to take a duty-free meal period. For example, Plaintiffs are to be in close
21 proximity to the company vehicle at all times, even during breaks. Plaintiffs’ schedules and
22 responses to customer requests also mandated that Plaintiffs work through their meal periods.
23 Also, because Plaintiffs were required to work off the clock before and after the scheduled
24 shift discussed *supra*, without pay, Plaintiffs were under strong compulsion to work through
25 breaks to finish their work as quickly as possible, thereby foregoing their meal breaks. Finally,
26 Plaintiffs are informed and believe Defendants did not maintain records of meal periods, as
27 required under section 7 of the applicable wage order.² Plaintiffs were not paid premium pay
28 as a result of missed meal periods.

² Plaintiffs are informed and believe IWC Wage Order 5-2001 is the applicable wage order.

59. As a result of Defendants' failure to provide duty-free meal periods, Plaintiffs are entitled to premium pay. Plaintiffs are informed and believe missed meal period premiums were not paid to Plaintiffs in violation of the applicable wage order and Labor Code § 226.7 to the extent Plaintiffs did not execute a valid on-duty meal period agreement.

60. By failing to allow Plaintiffs to take mandatory duty-free meal periods, and failing to pay Plaintiffs premium pay, Defendants have willfully violated Labor Code §§ 226.7, 512, and section 11 of IWC Wage Order No. 5-2001.

61. Plaintiffs have been damaged by the foregoing conduct in an amount subject to proof, within the jurisdictional limits of this Court.

62. WHEREFORE, Plaintiffs request relief, including meal period premiums, plus interest, as described herein, and penalties in accordance with Labor Code § 558.

63. This cause of action also is brought pursuant to California's Private Attorney General Act. Therefore, Plaintiffs seek any additional remedies available under Labor Code §§ 2698 et seq., including attorneys' fees pursuant to Labor Code § 2699(g)(1).

64. Plaintiffs also bring this cause of action against James Clark, individually; **Patrick Clark, individually; and Michael Clark, individually;** in accordance with Labor Code section 558.1. **James Clark, Patrick Clark, and Michael Clark were owners; directors; officers; or managing agents of JMP Bros, Inc.** (formerly Clark Pest Control, Inc.) with control over the administration of its wage and hour policies.

FIFTH CAUSE OF ACTION

Accounting

(ALL PLAINTIFFS v. **ALL DEFENDANTS**; and DOES 1-50)

65. Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through **64** as if fully stated herein.

66. Plaintiffs are owed wages, interest, and penalties as described herein and above.

67. Plaintiffs do not know the precise amount of the compensation due to them. Defendants possess records from which the amount of compensation due and owing to Plaintiffs can be calculated within a reasonable degree of certainty.

68. Plaintiffs compensation cannot be calculated by any means except through an accounting.

69. The amount of statutory interest and penalties owed to Plaintiffs are based on the amount of compensation owed to Plaintiffs. This amount can only be determined by an accounting of books and records that Defendants have refused to produce or share with Plaintiffs.

70. WHEREFORE, Plaintiffs request an *injunction* requiring Defendants to provide a detailed accounting of actual hours worked and wages unpaid, and requiring restitution of these sums to Plaintiffs.

SIXTH CAUSE OF ACTION

Failure to Produce Employment Records

(JUSTIN ADAMO; GABRIEL PADILLA; BRIGETTE REYES v. **ALL DEFENDANTS;**
and DOES 1 through 50, inclusive)
[Labor Code § 226]

71. Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through **70** as if fully stated herein.

72. Labor Code § 226(c) states the following: “An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request...” Similarly, Labor Code § 1198.5 requires production of employment records within 30 calendar days of a request.

73. Labor Code § 226(c) states the following: “An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request...” Similarly, Labor Code § 1198.5 requires production of employment records within 30 calendar days of a request.

1 74. On November 8, 2019, Plaintiffs Adamo and Padilla served a written
2 request via certified mail (return receipt requested) to Defendant, requesting records in
3 accordance with Labor Code §§ 226, 432, and 1198.5. Defendant signed the return receipt,
4 confirming it received the request. As of the date of this letter, Defendant has not produced
5 records.

6 75. On December 11, 2019, Plaintiffs Adamo and Padilla served a follow-up
7 request via certified mail (return receipt requested) to Defendant, reminding Defendant to
8 comply with the request. Plaintiffs are informed and believe no follow up documents were
9 provided.

10 76. On January 15, 2020, Plaintiff Brigitte Reyes served a written request via
11 certified mail (return receipt requested) to Defendant, requesting records in accordance with
12 Labor Code §§ 226, 432, and 1198.5. As of the date of this complaint, Defendant has not
13 produced records.

14 77. In accordance with Labor Code § 226(f), Plaintiffs each seek a penalty of
15 \$750.00 for the Defendant's failure to produce the wage records. Plaintiffs will also seek
16 reasonable attorneys' fees and costs in accordance with section 226(e) and (f).

17 78. Pursuant to Labor Code § 1198.5(k), Plaintiffs each seek an additional
18 penalty of \$750.00 for Defendant's failure to produce personnel records. Plaintiffs will seek
19 reasonable attorneys' fees and costs in accordance with section 1198.5(l).

20 79. Plaintiffs also bring this cause of action against James Clark, individually;
21 **Patrick Clark, individually; and Michael Clark, individually;** in accordance with Labor
22 Code section 558.1. **James Clark, Patrick Clark, and Michael Clark were owners;**
23 **directors; officers; or managing agents of JMP Bros, Inc.** (formerly Clark Pest Control,
24 Inc.) with control over the administration of its wage and hour policies.
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SEVENTH CAUSE OF ACTION

Unfair Competition Law

(ALL PLAINTIFFS v. **ALL DEFENDANTS**; and DOES 1-50)

[Business & Professions Code §§ 17200 et seq.]

80. Plaintiffs reincorporate and re-allege by reference the allegations contained in preceding paragraphs 1 through 79 as if fully set forth herein.

81. On information and belief and at all times relevant, Plaintiffs allege that Defendants, by and through its policies and practices, engaged in unlawful activity prohibited by Business and Professions Code §§ 17200 et seq. by:

- A. Failing to properly compensate Plaintiffs for minimum wages;
- B. Failing to properly compensate Plaintiffs with proper missed meal period premiums;
- C. Failing to properly compensate Plaintiffs for regular and overtime wages;
- D. Failing to maintain accurate payroll records and/or issue accurate itemized wage statements to Plaintiffs;
- E. Failing to provide Plaintiffs with employment records in accordance with Labor Code §§ 226, 1198.5; and
- F. Other unlawful, unfair and fraudulent actions, within the meaning of Business and Professions Code §§ 17200 *et seq.* directly causing a loss of property and other damage to Plaintiffs herein.

82. As a result of its unlawful acts, Defendants have reaped unfair benefits and unlawful profits at the expense of Plaintiffs. Defendants should be enjoined from this activity and made to disgorge the ill-gotten gains and restore to Plaintiffs the wrongfully withheld wages pursuant to Business and Professions Code § 17203 and penalties pursuant to § 17202.

83. Defendants have been and continue to be unjustly enriched through Defendants' false, fraudulent, unfair and deceptive business practices as alleged herein.

84. The unlawful conduct alleged herein is continuing, and there is no indication that Defendants will not continue such activity into the future. Plaintiffs allege that if

1 Defendants are *not enjoined* from the conduct set forth in this Complaint, they will continue
2 to act unlawfully.

3 85. Plaintiffs therefore request an injunction, requiring Defendants to cease and
4 desist from the practice of failing to pay wages and meal premiums, and ordering restitution
5 to Plaintiffs.

6 86. To the extent permitted by law, Plaintiffs request attorneys' fees and costs in
7 accordance with Code of Civil Procedure § 1021.5.

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9 **EIGHTH CAUSE OF ACTION**

10 *Waiting Time Penalties*

11 (ALL PLAINTIFFS v. ALL DEFENDANTS; and DOES 1-50)

12 [Labor Code §§ 201, 202, 203, 2699.5]

13 87. Plaintiffs re-allege and incorporate by reference the allegations of
14 paragraphs 1 - 86 as if fully stated herein.

15 88. Labor Code §§ 201 and 202 require Defendants to pay its employees all
16 wages due within 24 hours after a discharge or within 72 hours of resignation. Labor Code §
17 203 provides that if an employer willfully fails to timely pay such wages the employer must,
18 as a penalty, continue to pay the employee's wages until the back wages are paid in full or an
19 action is commenced, for up to 30 days.

20 89. Plaintiffs have been terminated or have resigned from employment with
21 Defendants. Plaintiffs allege they have not been paid for all hours worked at the time of
22 termination and/or within 72 hours of resignation, as described above. Plaintiffs allege that
23 employees have not been paid 30 days since their termination or resignation, therefore they
24 are entitled to waiting time penalties.

25 90. Plaintiffs have been damaged by the foregoing conduct in an amount subject
26 to proof, within the jurisdictional limits of this Court.

27 91. WHEREFORE, Plaintiffs request relief, including all wages earned,
28 including without limitation, the unpaid wages owed to Plaintiffs.

1 92. WHEREFORE, Plaintiffs request waiting time penalties under Labor Code
2 § 203.

3 93. WHEREFORE, Plaintiffs request attorneys' fees and costs pursuant to
4 Labor Code §§ 218.5, 1194(a), 2699(g)(1).

5 94. Plaintiffs also brings this action on behalf of themselves and all other
6 similarly aggrieved employees pursuant to California's Private Attorney General Act.
7 Therefore, Plaintiffs seek any additional remedies available under Labor Code §§ 2698 et seq.

8 95. Plaintiffs also bring this cause of action against James Clark, individually;
9 **Patrick Clark, individually; and Michael Clark, individually**, in accordance with Labor
10 Code section 558.1. **James Clark, Patrick Clark, and Michael Clark were owners;**
11 **directors; officers; or managing agents of JMP Bros, Inc.** (formerly Clark Pest Control,
12 Inc.) with control over the administration of its wage and hour policies.

13
14 **NINTH CAUSE OF ACTION**

15 *Failure to Make Semimonthly Payments*

16 (ALL PLAINTIFFS v. **ALL DEFENDANTS**;; and DOES 1-50)

17 [Labor Code §§ 204, 210, 2699.5]

18 96. Plaintiffs re-allege and incorporate by reference the allegations of
19 paragraphs 1 - **95** as if fully stated herein.

20 97. Labor Code § 204(a) provides that "[a]ll wages... earned by any person in
21 any employment are due and payable twice during the calendar month, on days designated in
22 advance by the employer as the regular paydays..."

23 98. For reasons set forth above, Defendants failed to pay Plaintiffs all wages
24 earned on the days designated as payday. This includes, but is not limited to, wages for all
25 hours worked.

26 99. Plaintiffs request payment of penalties in accordance to Labor Code § 210.

27 100. Plaintiffs also bring this action on behalf of themselves and all other
28 similarly aggrieved employees pursuant to California's Private Attorney General Act.
Therefore, Plaintiffs seek remedies available under Labor Code §§ 2698 et seq.

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(JUSTIN ADAMO; GABRIEL PADILLA v. **ALL DEFENDANTS**; and DOES 1 through 50)
[Labor Code §§ 1102.5(b), 2699.5]

101. Plaintiffs re-allege and incorporate by reference the allegations contained in preceding paragraphs 1-**100** as though fully set forth herein.

102. Under Labor Code § 1102.5 (b), “[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.”

103. On December 12, 2019, Plaintiffs Padilla and Adamo filed and served a PAGA notice alleging several violations of the Labor Code and the Business and Professions Code. By lodging the letter with the LWDA and serving Defendant, Plaintiffs believed they were opposing conduct that constituted a violation of local, state, or federal law.

104. On or around December 24, 2019, Defendant issued bonuses to employees, including but not limited to, secretaries, termite department employees, the manager, and other supervisors. Mr. Adamo and Mr. Padillo are informed and believe they were specifically excluded from payment of any bonus because they filed a PAGA notice and because they complained of illegal conduct (i.e. wage and hour violations).

105. Plaintiffs' protected complaints were a motivating reason for the adverse treatment and adverse employment action.

106. As a result of Defendant's above-described conduct, Plaintiffs have suffered, and continue to suffer, damages in the form of lost wages and other employment

benefits, pecuniary benefits, and emotional distress. Plaintiffs have been damaged by the foregoing conduct in an amount subject to proof, within the jurisdictional limits of this Court. Defendant's conduct was a substantial factor in causing Plaintiffs' harm.

107. Plaintiffs each seek a civil penalty of \$10,000 pursuant to Labor Code § 1102.5(f). Plaintiffs also seek a penalty under Labor Code § 1103.

108. Defendant's conduct by its managing agents was willful, malicious, intentional, and oppressive, entitling Plaintiffs to punitive damages, as Defendant knew that: 1) Plaintiffs have a right to be free from retaliation; 2) Defendant recklessly failed to anticipate that the foregoing conduct would cause emotional distress to Plaintiffs; 3) Defendant's failure to protect such right resulted in emotional distress to Plaintiffs, thereby intentionally or recklessly subjecting Plaintiffs to said emotional distress; 4) by intentionally or recklessly subjecting Plaintiffs to said emotional distress, Defendant engaged in conduct that was oppressive, malicious, cruel and unjust. Plaintiffs are entitled to recover exemplary and punitive damages from Defendant in an amount according to proof.

109. This cause of action is brought under PAGA as authorized pursuant to Labor Code § 2699.5. Therefore, Plaintiffs seek reasonable fees and costs pursuant to Labor Code § 2699(g)(1). Plaintiffs seek to represent employees similarly situated to the extent a reasonable investigation reveals additional aggrieved employees.

ELEVENTH CAUSE OF ACTION

Retaliation for Filing a PAGA Notice / Complaining of Unpaid Wages
(JUSTIN ADAMO; GABRIEL PADILLA v. **ALL DEFENDANTS**;
and DOES 1 through 50)
[Labor Code §§ 98.6, 2699.5]

110. Plaintiffs re-allege and incorporate by reference the allegations contained in preceding paragraphs 1-109 as though fully set forth herein.

111. Under Labor Code § 98.6(a), "[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96,

1 and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the
2 employee or applicant for employment has filed a bona fide complaint or claim or instituted or
3 caused to be instituted any proceeding under or relating to his or her rights that are under the
4 jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is
5 owed unpaid wages, or because the employee has initiated any action or notice pursuant to
6 Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or
7 because of the exercise by the employee or applicant for employment on behalf of himself,
8 herself, or others of any rights afforded him or her.”

9 112. On December 12, 2019, Plaintiffs Padilla and Adamo filed and served a
10 PAGA notice alleging several violations of the Labor Code and the Business and Professions
11 Code. By lodging the letter with the LWDA and serving Defendant, Plaintiffs believed they
12 were opposing conduct that constituted a violation of local, state, or federal law.

13 113. On or around December 24, 2019, Defendant issued bonuses to employees,
14 including but not limited to, secretaries, termite department employees, the manager, and
15 other supervisors. Mr. Adamo and Mr. Padillo are informed and believe they were specifically
16 excluded from payment of any bonus because they filed a PAGA notice and because they
17 complained of illegal conduct (i.e. wage and hour violations).

18 114. Plaintiffs’ protected complaints were a motivating reason for the adverse
19 treatment and adverse employment action.

20 115. As a result of Defendant’s above-described conduct, Plaintiffs have
21 suffered, and continue to suffer, damages in the form of lost wages and other employment
22 benefits, pecuniary benefits, and emotional distress. Plaintiff have been damaged by the
23 foregoing conduct in an amount subject to proof, within the jurisdictional limits of this Court.
24 Defendant’s conduct was a substantial factor in causing Plaintiffs’ harm.

25 116. Plaintiffs each seek a civil penalty of \$10,000 pursuant to Labor Code §
26 98.6(b)(3).

27 117. Defendant’s conduct by its managing agents was willful, malicious,
28 intentional, and oppressive, entitling Plaintiffs to punitive damages, as Defendant knew that:

1) Plaintiffs have a right to be free from retaliation; 2) Defendant recklessly failed to anticipate that the foregoing conduct would cause emotional distress to Plaintiffs; 3) Defendant's failure to protect such right resulted in emotional distress to Plaintiffs, thereby intentionally or recklessly subjecting Plaintiffs to said emotional distress; 4) by intentionally or recklessly subjecting Plaintiffs to said emotional distress, Defendant engaged in conduct that was oppressive, malicious, cruel and unjust. Plaintiffs are entitled to recover exemplary and punitive damages from Defendant in an amount according to proof.

118. This cause of action is brought under PAGA as authorized pursuant to Labor Code § 2699.5. Therefore, Plaintiffs seek reasonable fees and costs pursuant to Labor Code § 2699(g)(1). Plaintiffs seek to represent employees similarly situated to the extent a reasonable investigation reveals additional aggrieved employees.

TWELFTH CAUSE OF ACTION

PAGA Civil Penalties

(ALL PLAINTIFFS v. **ALL DEFENDANTS**; and DOES 1-50)

[California Labor Code §§ 2698 et seq.]

119. Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 - **118** as if fully stated herein.

120. Labor Code § 2699(a),(g) authorizes an aggrieved employees, on behalf of themselves and other current and former employees and the general public, to bring a representative civil action to recover civil penalties pursuant to procedures set forth by Labor Code § 2699.3.

121. During the applicable limitations period, Defendants have violated Labor Code §§ 98.6, 201, 202, 203, 204, 210, **223**, 226, 226.2, 226.3, 226.6, 500, 510, **512**, 551, 552, 558, 1102.5, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 2699, and IWC Wage Order No. 5-2001.

122. Plaintiffs are aggrieved employees within the meaning of Labor Code § 2699(c).

123. Plaintiffs seek the following penalties pursuant to PAGA:

- a. Labor Code § 98.6;
- b. Labor Code § 201;
- c. Labor Code § 202;
- d. Labor Code § 203;
- e. Labor Code § 204;
- f. Labor Code § 210;
- g. **Labor Code § 223;**
- h. Labor Code § 226;
- i. Labor Code § 226.2;
- j. Labor Code § 226.3;
- k. Labor Code § 226.6;
- l. Labor Code § 500;
- m. Labor Code § 510;
- n. Labor Code § 551;
- o. Labor Code § 552;
- p. Labor Code § 558;
- q. Labor Code § 1102.5;
- r. Labor Code § 1174;
- s. Labor Code § 1174.5;
- t. Labor Code § 1175;
- u. Labor Code § 1194;
- v. Labor Code § 1194.2;
- w. Labor Code § 1197;
- x. Labor Code § 1197.1;
- y. Labor Code § 2699; and
- z. IWC Wage Order No. 5-2001.

1 124. As set forth above, Plaintiffs have complied with the procedures as set forth by
2 Labor Code § 2699.3, allowing Plaintiffs to bring a civil action pursuant to Labor Code §§
3 2698 et seq.

4 125. WHEREFORE, Plaintiffs request attorneys' fees and costs pursuant to Labor
5 Code § 2699(g)(1).

6 126. Plaintiffs are informed and believe James Clark, **Patrick Clark, and Michael**
7 **Clark** caused a transfer of assets from Clark Pest Control, Inc. to JMP Bros, Inc. and/or Clark
8 Pest Control of Stockton, Inc. to potentially avoid liability to Plaintiffs arising out Plaintiffs'
9 employment relationship with Clark Pest Control, Inc., including liability for civil penalties
10 under Labor Code §§ 2698 et seq.

11
12 **THIRTEENTH CAUSE OF ACTION**
13 ***Unlawful Withholding of Wages***
14 **(ALL PLAINTIFFS v. ALL DEFENDANTS)**
 [Labor Code §§ 223; 225.5]

15 127. **Plaintiffs re-allege and incorporate by reference the allegations of**
16 **paragraphs 1 - 126 as if fully stated herein.**

17 128. **Labor Code § 223 states: "Where any statute or contract requires an**
18 **employer to maintain the designated wage scale, it shall be unlawful to secretly pay a**
19 **lower wage while purporting to pay the wage designated by statute or by contract."**

20 129. **By way of Defendant's unlawful compensation system described above,**
21 **Plaintiffs were not paid for all hours worked and was paid less than what was required**
22 **by both statute and contract.**

23 130. **Plaintiffs are informed and believes this is an unlawful withholding of**
24 **wages, in violation of Labor Code § 223. Defendants also failed to include an accounting**
25 **of these withholdings on wage statements issued to Plaintiffs.**

26 131. **Plaintiffs have been damaged by the foregoing conduct in an amount**
27 **subject to proof, within the jurisdictional limits of this Court. Plaintiff requests relief,**
28 **including all wages earned, plus interest.**

1 132. Plaintiffs also seek civil penalties in accordance with Labor Code §
2 **225.5.**

3 133. Plaintiffs seek attorneys' fees and costs in accordance with Labor Code
4 **§ 218.5.**

5
6 **FOURTEENTH CAUSE OF ACTION**
7 *Missed Rest Periods*
8 **(ALL PLAINTIFFS v. ALL DEFENDANTS)**
9 **[Labor Code §§ 226.7; 558; 512; 2699.5; and**
 IWC Wage Order No. 5-2001]

10 134. Plaintiffs re-allege and incorporate by reference the allegations of
11 **paragraphs 1 - 133 as if fully stated herein.**

12 135. Labor Code section 226.7(a) provides that “[n]o employer shall require
13 any employee to work during any meal or rest period mandated by an applicable order
14 of the Industrial Welfare Commission.” IWC Wage Order No. 5-2001, section 11(A)
15 states that “[e]very employer shall authorize and permit all employees to take rest
16 periods ... The authorized rest period time shall be based on the total hours worked daily
17 at the rate of ten (10) minutes net rest time for every (4) hours worked...”

18 136. Because of the nature of the work, during relevant times herein, Plaintiffs
19 were unable to take a duty-free rest periods. Plaintiffs' schedules and responses to
20 customer requests also mandated that Plaintiffs work through their meal periods. Also,
21 because Plaintiffs were required to work off the clock before and after the scheduled
22 shift discussed *supra*, Plaintiffs were under strong compulsion to work through breaks to
23 finish their work as quickly as possible, thereby foregoing their rest breaks.

24 137. As a result of Defendant's failure to provide duty-free rest periods,
25 Aggrieved Employees are entitled to premium pay. Aggrieved Employees are informed
26 and believe rest period premiums were not paid to Aggrieved Employees, in violation of
27 the applicable wage order and Labor Code § 226.7.

1 138. By failing to allow Aggrieved Employees to take mandatory duty-free rest
2 periods, and failing to pay Aggrieved Employees premium pay, Defendant has willfully
3 violated Labor Code §§ 226.7, 512, 558 and section 11 of IWC Wage Order No. 5-2001.

4 139. Aggrieved Employees, including Plaintiffs, request payment of penalties in
5 accordance to Labor Code §§ 558, 2699(f)(2).

6 140. Aggrieved Employees, including Plaintiffs, request attorneys' fees and
7 costs pursuant to Labor Code § 2699(g)(1).

8
9
10 **WHEREFORE, Plaintiffs pray for judgment as follows:**

- 11 a. For compensatory damages, including unpaid wages, in accordance with Labor Code
12 §§ 218.5, 1194;
- 13 b. For meal **and rest period** premium pay pursuant to Labor Code §§ 226.7, 512, and
14 IWC Wage Order No. 5-2001;
- 15 c. For liquidated damages pursuant to Labor Code § 1194.2;
- 16 d. That Defendants be found to have engaged in unfair competition in violation of
17 Business and Professions Code §§17200 *et seq.*;
- 18 e. That Defendants be ordered and enjoined to provide an accounting and make
19 restitution to Plaintiffs, including disgorgement of its wrongfully obtained revenues,
20 earnings, profits, compensation, and benefits pursuant to California Business and
21 Professions Code §§ 17203 and 17204;
- 22 f. For an injunction pursuant to Labor Code § 226 and in equity, requiring Defendants to
23 provide a detailed accounting of actual hours worked by Plaintiffs, alterations to time
24 records, and wages unpaid, and requiring restitution of these sums to Plaintiffs.
- 25 g. For an injunction requiring Defendants to produce accurate itemized wage statements,
26 if any were kept.
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28

- 1 h. For payment of civil penalties for failure to issue accurate wages statements in
2 accordance with Labor Code § 226(e)(1) and damages as a result of re-creating hours
3 worked;
- 4 i. For payment of penalties for each inaccurate wage statement Defendants issued to
5 Plaintiffs in accordance with Labor Code §§ 226(e), 226.3, 226.6;
- 6 j. For civil penalties pursuant to Labor Code §§ 210, **225.5**, 558, 1174.5, 1197.1,
7 2699(f)(2);
- 8 k. For civil penalties in accordance with Labor Code §§ 98.6(b)(3), 1102.5(f);
- 9 l. Compensatory Damages, including the back pay, front pay, interest and damages for
10 emotional distress;
- 11 m. That Defendants be ordered and enjoined to provide an accounting for an injunction
12 requiring inclusion of all hours worked in calculating Plaintiffs' unpaid wages;
- 13 n. For payment of waiting time penalties for non-payment of wages to employees
14 similarly situated to Plaintiffs in accordance with Labor Code §§ 201, 202 and 203;
- 15 o. For interest on unpaid wages, including interest premium wages, pursuant to Labor
16 Code § 218.6;
- 17 p. For attorneys' fees and costs pursuant to Labor Code §§ 218.5, 226(e), 1194(a),
18 2699(g)(1);
- 19 q. For punitive damages;
- 20 r. For such other and further relief as the Court deems just and proper.

21
22 **MICHAEL J. F. SMITH,**
23 **A PROFESSIONAL CORPORATION**

24 Dated: May 11, 2022

25 By: /s/John L. Migliazzo
26 John L. Migliazzo,
27 Attorney for Plaintiffs
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On the date indicated below, I served the foregoing document(s) described as **THIRD AMENDED COMPLAINT** on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

[X] (BY ELECTRONIC MAIL) I caused such documents to be scanned into PDF format and sent via electronic mail to the electronic mail addressee(s) of the addressee(s) designated.

The foregoing document(s) described above have been served on the California Labor and Workforce Development Agency (“Agency”) via the Agency’s online filing system (Labor Code § 2699(l)(2)):

EXECUTED ON **May 11, 2022** at Fresno, California.

/s/John L. Migliazzo
John L. Migliazzo